

AMENDED IN ASSEMBLY APRIL 14, 2011

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1244

**Introduced by Assembly Member Chesbro
(Coauthors: Assembly Members Ammiano and Beall)**

February 18, 2011

An act to ~~add Section 4685.8 to~~ amend Sections 4677 and 4678 of, repeal Section 4685.7 of, and to add Article 4.5 (commencing with Section 4689.90) to Chapter 6 of Division 4.5 of, the Welfare and Institutions Code, relating to developmental services, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1244, as amended, Chesbro. Developmental services: Self-Determination Program.

Under existing law, the Lanterman Developmental Disabilities Services Act, the State Department of Developmental Services is authorized to contract with regional centers to provide support and services to individuals with developmental disabilities. Under existing law, the regional centers purchase needed services and supports for individuals with developmental disabilities through approved service providers or arrange for their provision through other publicly funded agencies. The services and supports to be provided to a regional center consumer are contained in an individual program plan (IPP), developed in accordance with prescribed requirements. Existing law establishes, contingent upon approval of a federal waiver, the Self-Directed Services Program, and requires the program be available in every regional center

catchment area to provide participants, within an individual budget, and greater control over needed services and supports.

This bill would *repeal the provisions establishing the Self-Directed Services Program and would, instead,* establish the Self-Determination Program to be available in every regional center catchment area to enable individuals with developmental disabilities to exercise their rights to make choices in their own lives *and would make conforming changes.* This bill would require that program participants be provided with a capitated individual funding allocation, as prescribed, to be used for the purchase of services and supports necessary to implement the participant's individual program plan. *This bill would require the department to establish a risk pool fund to meet the unanticipated needs of participants in the program and would continuously appropriate the moneys in the fund to the department for this purpose.* This bill would require the department to take all steps necessary to ensure federal financial participation is available for all program services and supports by applying for amendments to a specified federal waiver or by applying for a new waiver.

Vote: ~~majority~~^{2/3}. Appropriation: ~~no~~-yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4677 of the Welfare and Institutions Code
2 is amended to read:
3 4677. (a) (1) All parental fees collected by or for regional
4 centers shall be remitted to the State Treasury to be deposited in
5 the Developmental Disabilities Program Development Fund, which
6 is hereby created and hereinafter called the Program Development
7 Fund. The purpose of the Program Development Fund shall be to
8 provide resources needed to initiate new programs, and to expand
9 or convert existing programs. Within the context of, and consistent
10 with, approved priorities for program development in the state
11 plan, program development funds shall promote integrated
12 residential, work, instructional, social, civic, volunteer, and
13 recreational services and supports that increase opportunities for
14 self-determination and maximum independence of persons with
15 developmental disabilities. Notwithstanding any other provision
16 of law or regulation to the contrary, commencing July 1, 2009,

1 parental fees remitted to the State Treasury shall be deposited in
2 accordance with Section 4784.

3 (2) In no event shall an allocation from the Program
4 Development Fund be granted for more than 24 months.

5 (b) (1) The State Council on Developmental Disabilities shall,
6 at least once every five years, request from all regional centers
7 information on the types and amounts of services and supports
8 needed, but currently unavailable.

9 (2) The state council shall work collaboratively with the
10 department and the Association of Regional Center Agencies to
11 develop standardized forms and protocols that shall be used by all
12 regional centers and area boards in collecting and reporting this
13 information. In addition to identifying services and supports that
14 are needed, but currently unavailable, the forms and protocols shall
15 also solicit input and suggestions on alternative and innovative
16 service delivery models that would address consumer needs.

17 (3) In addition to the information provided pursuant to paragraph
18 (2), the state council may utilize information from other sources,
19 including, but not limited to, public hearings, quality assurance
20 assessments conducted pursuant to Section 4571, regional center
21 reports on alternative service delivery submitted to the department
22 pursuant to Section 4669.2, and the annual report on ~~self-directed~~
23 ~~services produced pursuant to Section 4685.7~~ *Self-Determination*
24 *Program services produced pursuant to Section 4689.94*.

25 (4) The department shall provide additional information, as
26 requested by the state council.

27 (5) Based on the information provided by the regional centers
28 and other agencies, the state council shall develop an assessment
29 of the need for new, expanded, or converted community services
30 and support, and make that assessment available to the public. The
31 assessment shall include a discussion of the type and amount of
32 services and supports necessary but currently unavailable including
33 the impact on consumers with common characteristics, including,
34 but not limited to, disability, specified geographic regions, age,
35 and ethnicity, face distinct challenges. The assessment shall
36 highlight alternative and innovative service delivery models
37 identified through their assessment process.

38 (6) This needs assessment shall be conducted at least once every
39 five years and updated annually. The assessment shall be included
40 in the state plan and shall be provided to the department and to the

1 appropriate committees of the Legislature. The assessment and
2 annual updates shall be made available to the public. The State
3 Council on Developmental Disabilities, in consultation with the
4 department, shall make a recommendation to the Department of
5 Finance as to the level of funding for program development to be
6 included in the Governor's Budget, based upon this needs
7 assessment.

8 (c) Parental fee schedules shall be evaluated pursuant to Section
9 4784 and adjusted annually, as needed, by the department, with
10 the approval of the state council. The July 1, 2009, parental fee
11 adjustment shall be exempt from this approval requirement. Fees
12 for out-of-home care shall bear an equitable relationship to the
13 cost of the care and the ability of the family to pay.

14 (d) In addition to parental fees and General Fund appropriations,
15 the Program Development Fund may be augmented by federal
16 funds available to the state for program development purposes,
17 when these funds are allotted to the Program Development Fund
18 in the state plan. The Program Development Fund is hereby
19 appropriated to the department, and subject to any allocations that
20 may be made in the annual Budget Act. In no event shall any of
21 these funds revert to the General Fund.

22 (e) The department may allocate funds from the Program
23 Development Fund for any legal purpose, provided that requests
24 for proposals and allocations are approved by the state council in
25 consultation with the department, and are consistent with the
26 priorities for program development in the state plan. Allocations
27 from the Program Development Fund shall take into consideration
28 the following factors:

29 (1) The future fiscal impact of the allocations on other state
30 supported services and supports for persons with developmental
31 disabilities.

32 (2) The information on priority services and supports needed,
33 but currently unavailable, submitted by the regional centers.

34 Consistent with the level of need as determined in the state plan,
35 excess parental fees may be used for purposes other than programs
36 specified in subdivision (a) only when specifically appropriated
37 to the State Department of Developmental Services for those
38 purposes.

39 (f) Under no circumstances shall the deposit of federal moneys
40 into the Program Development Fund be construed as requiring the

1 State Department of Developmental Services to comply with a
2 definition of “developmental disabilities” and “services for persons
3 with developmental disabilities” other than as specified in
4 subdivisions (a) and (b) of Section 4512 for the purposes of
5 determining eligibility for developmental services or for allocating
6 parental fees and state general funds deposited in the Program
7 Development Fund.

8 *SEC. 2. Section 4678 of the Welfare and Institutions Code is*
9 *amended to read:*

10 4678. (a) The State Council on Developmental Disabilities,
11 in implementing subdivision (b) of Section 4677, and with the
12 support of the State Department of Developmental Services, shall
13 convene a stakeholder workgroup on alternative and expanded
14 options for nonresidential services and supports. The workgroup
15 shall include persons with developmental disabilities, family
16 members, providers, and other system stakeholders. The workgroup
17 shall develop recommendations on how to best achieve all of the
18 following:

19 (1) The development and expansion of community-based models
20 that provide an array of nonresidential options, including, but not
21 limited to, participation in integrated instructive, social, civic,
22 volunteer, and recreational activities.

23 (2) The development and expansion of community-based work
24 activities, including, but not limited to, customized employment
25 development, integrated job training, and employer-provided job
26 coaching.

27 (3) The expansion of work opportunities in the public sector.

28 (4) The increased utilization of existing models, including, but
29 not limited to, ~~self-directed services~~ *Self-Determination Program*
30 *services*, vouchers, family teaching models, existing habilitation,
31 and supported work vendors to facilitate access to nontraditional
32 community-based nonresidential activities.

33 (5) Strategies to promote and duplicate successful and innovative
34 models developed in California and in other states.

35 (6) The identification of, and strategies to address, statutory,
36 regulatory, licensing, vendor-related, funding and other types of
37 barriers to achieving the goals identified in this act, including
38 strategies to improve individualization of services and supports
39 by increased flexibility in design, staffing, and compensation.

(b) By May 1, 2007, the State Council on Developmental Disabilities shall submit recommendations from the workgroup to the Governor and appropriate committees of the Legislature and may, thereafter, incorporate subsequent recommendations into its state plan developed pursuant to Section 4561.

SEC. 3. Section 4685.7 of the Welfare and Institutions Code is repealed.

~~4685.7. (a) Contingent upon approval of a federal waiver, the Self-Directed Services Program (SDS Program) is hereby established and shall be available in every regional center catchment area to provide participants, within an individual budget, greater control over needed services and supports. The Self-Directed Services Program shall be consistent with the requirements set forth in this section. In order to provide opportunities to participate in the program, the department shall adopt regulations, consistent with federal law, to implement the procedures set forth in this section.~~

~~(b) For purposes of this section, the following definitions shall apply:~~

~~(1) "Financial management services" means a service or function that assists the participant to manage and direct the distribution of funds contained in the individual budget. This may include, but is not limited to, bill paying services and activities that facilitate the employment of service workers by the participant, including, but not limited to, federal, state, and local tax withholding payments; unemployment compensation fees; setting of wages and benefits; wage settlements, fiscal accounting, and expenditure reports. The department shall establish specific qualifications which shall be required of a financial management services provider.~~

~~(2) "Supports brokerage" means a service or function that assists participants in making informed decisions about the individual budget, and assists in locating, accessing and coordinating services consistent with and reflecting a participant's needs and preferences. The service is available to assist in identifying immediate and long-term needs, developing options to meet those needs, participating in the person-centered planning process and development of the individual program plan, and obtaining identified supports and services.~~

~~(3) "Supports broker" means a person, selected and directed by the participant, who fulfills the supports brokerage service or~~

1 function and assists the participant in the SDS Program. Specific
2 qualifications shall be established by the department and required
3 of a supports broker provider.

4 (4) “Waiver” means a waiver of federal law pursuant to Section
5 1396n of Title 42 of the United States Code.

6 (5) “Independence Plus Self-Directed (IPSD) Waiver Program”
7 or “Self-Directed Waiver Program” means a federal waiver to the
8 state’s Medicaid plan to allow a person with developmental
9 disabilities who needs or requires long-term supports and services;
10 and when appropriate, the person’s family, greater opportunity to
11 control his or her own health and well-being by utilization of
12 self-directed services.

13 (6) “Self-directed services” or “SDS” means a voluntary delivery
14 system consisting of a defined and comprehensive mix of services
15 and supports, selected and directed by a participant, in order to
16 meet all or some of the objectives in his or her individual program
17 plan. Self-directed services are designed to assist the participant
18 to achieve personally defined outcomes in inclusive community
19 settings.

20 Self-directed services shall include, but are not limited to, all of
21 the following:

- 22 (A) Home health aide services.
- 23 (B) Supported employment and prevocational services.
- 24 (C) Respite services.
- 25 (D) Supports broker functions and services.
- 26 (E) Financial management services and functions.
- 27 (F) Environmental accessibility adaptations.
- 28 (G) Skilled nursing.
- 29 (H) Transportation.
- 30 (I) Specialized medical equipment and supplies.
- 31 (J) Personal emergency response system.
- 32 (K) Integrative therapies.
- 33 (L) Vehicle adaptations.
- 34 (M) Communication support.
- 35 (N) Crises intervention.
- 36 (O) Nutritional consultation.
- 37 (P) Behavior intervention services.
- 38 (Q) Specialized therapeutic services.
- 39 (R) Family assistance and support.
- 40 (S) Housing access supports.

~~(T) Community living supports, including, but not limited to, socialization, personal skill development, community participation, recreation, leisure, home and personal care.~~

~~(U) Advocacy services.~~

~~(V) Individual training and education.~~

~~(W) Participant-designated goods and services.~~

~~(X) Training and education transition services.~~

~~The department shall include all of the services and supports listed in this paragraph in the IPSD Waiver Program application. Notwithstanding this paragraph, only services and supports included in an approved IPSD Waiver shall be funded through the SDS Program.~~

~~(7) “Advocacy services” means services and supports that facilitate the participant in exercising his or her legal, civil and service rights to gain access to generic services and benefits that the participant is entitled to receive. Advocacy services shall only be provided when other sources of similar assistance are not available to the participant, and when advocacy is directed towards obtaining generic services.~~

~~(8) “Individual budget” means the amount of funding available to the participant for the purchase of services and supports necessary to implement an individual program plan. The individual budget shall be constructed using a fair, equitable, and transparent methodology.~~

~~(9) “Risk pool” means an account that is available for use in addressing the unanticipated needs of participants in the SDS Program.~~

~~(10) “Participant” means an individual, and when appropriate, his or her parents, legal guardian or conservator, or authorized representative, who have been deemed eligible for, and have voluntarily agreed to participate in, the SDS Program.~~

~~(c) Participation in the SDS Program is fully voluntary. A participant may choose to participate in, and may choose to leave, the SDS Program at any time. A regional center may not require participation in the SDS Program as a condition of eligibility for, or the delivery of, services and supports otherwise available under this Division.~~

~~(d) The department shall develop informational materials about the SDS Program. The department shall ensure that regional centers are trained in the principles of SDS, the mechanics of the SDS~~

1 Program and the rights of consumers and families as candidates
2 for, and participants, in the SDS Program. Regional centers shall
3 conduct local meetings or forums to provide regional center
4 consumers and families with information about the SDS Program.
5 All consumers and families who express an interest in participating
6 in the SDS program shall receive an in-depth orientation, conducted
7 by the regional center, prior to enrollment in the program.

8 (e) Prior to enrollment in the SDS Program, and based on the
9 methodologies described below, an individual, and when
10 appropriate, his or her parents, legal guardian or conservator, or
11 authorized representative, shall be provided in writing two
12 individual budget amounts. If the individual, and when appropriate
13 his parents, legal guardian or conservator, or authorized
14 representative, elects to become a participant in the SDS Program,
15 he or she shall choose which of the two budget amounts provided
16 will be used to implement their individual program plan.

17 (1) The methodologies and formulae for determining the two
18 individual budget amounts shall be detailed in departmental
19 regulations, as follows:

20 (A) One individual budget amount shall equal 90 percent of the
21 annual purchase of services costs for the individual. The annual
22 costs shall reflect the average annual costs for the previous two
23 fiscal years for the individual.

24 (B) One individual budget amount shall equal 90 percent of the
25 annual per capita purchase of service costs for the previous two
26 fiscal years for consumers with similar characteristics, who do not
27 receive services through the SDS Program, based on factors
28 including, but not limited to, age, type of residence, type of
29 disability and ability, functional skills, and whether the individual
30 is in transition. This budget methodology shall be constructed
31 using data available on the State Department of Developmental
32 Services information system.

33 (2) Once a participant has selected an individual budget amount,
34 that individual budget amount shall be available to the participant
35 each year for the purchase of self-directed services until a new
36 individual budget amount has been determined. An individual
37 budget amount shall be calculated no more than once in a 12-month
38 period.

1 ~~(3) As determined by the participant, the individual budget shall~~
2 ~~be distributed among the following budget categories in order to~~
3 ~~implement the IPP:~~

4 ~~(A) Community Living.~~

5 ~~(B) Health and Clinical Services.~~

6 ~~(C) Employment.~~

7 ~~(D) Training and Education.~~

8 ~~(E) Environment and Medical Supports.~~

9 ~~(F) Transportation.~~

10 ~~(4) Annually, participants may transfer up to 10 percent of the~~
11 ~~funds originally distributed to any budget category set forth in~~
12 ~~paragraph (3), to another budget category or categories. Transfers~~
13 ~~in excess of 10 percent of the original amount allocated to any~~
14 ~~budget category may be made upon the approval of the regional~~
15 ~~center. Regional centers may only deny a transfer if necessary to~~
16 ~~protect the health and safety of the participant.~~

17 ~~(5) The regional center shall annually ascertain from the~~
18 ~~participant whether there are any circumstances that require a~~
19 ~~change to the annual individual budget amount. The department~~
20 ~~shall detail in regulations the process by which this annual review~~
21 ~~shall be achieved.~~

22 ~~(6) A regional center's calculation of an individual budget~~
23 ~~amount may be appealed to the executive director of the regional~~
24 ~~center, or his or her designee, within 30 days after receipt of the~~
25 ~~budget amount. The executive director shall issue a written decision~~
26 ~~within 10 working days. The decision of the executive director~~
27 ~~may be appealed to the Director of Developmental Services, or~~
28 ~~his or her designee, within 15 days of receipt of the written~~
29 ~~decision. The decision of the department is final.~~

30 ~~(f) The department shall establish a risk pool fund to meet the~~
31 ~~unanticipated needs of participants in the SDS Program. The fund~~
32 ~~shall be administered by the department. Notwithstanding Section~~
33 ~~13340 of the Government Code, all moneys in the fund shall be~~
34 ~~continuously appropriated to the department, without regard to~~
35 ~~fiscal years, for the purpose of funding services and supports~~
36 ~~pursuant to this subdivision.~~

37 ~~(1) The risk pool shall be funded at the equivalent of 5 percent~~
38 ~~of the historic annual purchase of service costs for consumers~~
39 ~~participating in the SDS Program.~~

1 ~~(2) The risk pool shall be allocated by the department to regional~~
2 ~~centers through a process specified by the department.~~

3 ~~(3) The risk pool may be used only in the event of substantial~~
4 ~~change in a participant's service and support needs that were not~~
5 ~~known at the time the individual budget was set, including an~~
6 ~~urgent need to relocate a residence, and catastrophic injury or~~
7 ~~illness.~~

8 ~~(4) The risk pool may be accessed by a participant more than~~
9 ~~once in a lifetime.~~

10 ~~(g) In the first year of the SDS Program, the department shall~~
11 ~~provide for establishment of savings to the General Fund equivalent~~
12 ~~to 5 percent of the historic annual purchase of service costs for~~
13 ~~SDS program participants. In subsequent fiscal years, the~~
14 ~~department shall annually provide for establishment of savings to~~
15 ~~the General Fund equivalent to 5 percent of the annual purchase~~
16 ~~of services costs for SDS Program participants, averaged over the~~
17 ~~prior two fiscal years.~~

18 ~~(h) A regional center may advance funds to a financial~~
19 ~~management services entity pursuant to SDS Program regulations~~
20 ~~to facilitate development of a participant's individual budget and~~
21 ~~transition into the SDS Program.~~

22 ~~(i) Participation in the SDS Program shall be available to any~~
23 ~~regional center consumer who meets the following eligibility~~
24 ~~requirements:~~

25 ~~(1) The participant is three years of age or older.~~

26 ~~(2) The participant has a developmental disability, as defined~~
27 ~~in Section 4512.~~

28 ~~(3) The participant does not live in a licensed long-term health~~
29 ~~care facility, as defined in paragraph (44) of subdivision (a) of~~
30 ~~Section 54302 of Title 17 of the California Code of Regulations,~~
31 ~~or a residential facility, as defined in paragraph (55) of subdivision~~
32 ~~(a) of Section 54302 of Title 17 of the California Code of~~
33 ~~Regulations, or receive day program or habilitation services, as~~
34 ~~defined in paragraph (16) or (34) of subdivision (a) of Section~~
35 ~~54302 of Title 17 of the California Code of Regulations,~~
36 ~~respectively. An individual, and when appropriate, his or her~~
37 ~~parent, legal guardian or conservator, or authorized representative,~~
38 ~~who is not eligible to participate in the SDS Program pursuant to~~
39 ~~this paragraph, may request that the regional center provide~~
40 ~~person-centered planning services in order to make arrangements~~

1 for transition to the SDS Program. In that case, the regional center
2 shall initiate person-centered planning services within 60 days of
3 a request.

4 (4) The participant agrees to all of the following terms and
5 conditions:

6 (A) The participant shall undergo an in-depth orientation to the
7 SDS Program prior to enrollment.

8 (B) The participant shall agree to utilize the services and
9 supports available within the SDS Program only when generic
10 services cannot be accessed, and except for Medi-Cal state plan
11 benefits when applicable.

12 (C) The participant shall consent to use only services necessary
13 to implement his or her individual program plan as described in
14 the IPSP Waiver Program, and as defined in paragraph (6) of
15 subdivision (b), as an available service in the SDS Program, and
16 shall agree to comply with any and all other terms and conditions
17 for participation in the SDS Program described in this section.

18 (D) The participant shall manage self-directed services within
19 the individual budget amount, chosen pursuant to subdivision (c).

20 (E) The participant shall utilize the services of a financial
21 management services entity of his or her own choosing. A financial
22 management services provider may either be hired or designated
23 by the participant. A designated financial management services
24 provider shall perform services on a nonpaid basis. An individual
25 or a parent of an individual in the SDS Program shall provide
26 financial management services only as a designated provider and
27 only if the capacity to fulfill the roles and responsibilities as
28 described in the financial management services provider
29 qualifications can be demonstrated to the regional center.

30 (F) The participant shall utilize the services of a supports broker
31 of his or her own choosing for the purpose of providing services
32 and functions as described in paragraphs (2) and (3) of subdivision
33 (b). A supports broker may either be hired or designated by the
34 participant. A designated supports broker shall perform support
35 brokerage services on a nonpaid basis. An individual or a parent
36 of an individual in the SDS Program shall provide supports
37 brokerage services or his or her designated representative shall
38 provide the services only as a designated provider and only if the
39 capacity to fulfill the role and responsibilities as described in the

1 supports broker provider qualifications can be demonstrated to the
2 financial management services entity.

3 (j) A participant who is not Medi-Cal eligible may participate
4 in the SDS Program without IPSD Waiver Program enrollment
5 and receive self-directed services if all other IPSD Waiver Program
6 eligibility requirements are met.

7 (k) The planning team, established pursuant to subdivision (j)
8 of Section 4512, shall utilize the person-centered planning process
9 to develop the Individual Program Plan (IPP) for an SDS
10 participant. The IPP shall detail the goals and objectives of the
11 participant that are to be met through the purchase of participant
12 selected services and supports.

13 (l) The participant shall implement his or her IPP, including
14 choosing the services and supports allowable under this section
15 necessary to implement the plan. A regional center may not prohibit
16 the purchase of any service or support that is otherwise allowable
17 under this section.

18 (m) An adult may designate an authorized representative to
19 effect the implementation. The representative shall meet all of the
20 following requirements:

21 (1) He or she shall demonstrate knowledge and understanding
22 of the participant's needs and preferences.

23 (2) He or she shall be willing and able to comply with SDS
24 Program requirements.

25 (3) He or she shall be at least 18 years of age.

26 (4) He or she shall be approved by the participant to act in the
27 capacity of a representative.

28 (n) The participant, or his or her authorized representative and
29 the regional center case manager shall receive a monthly budget
30 statement that describes the amount of funds allocated by budget
31 category, the amount spent in the previous 30-day period, and the
32 amount of funding that remains available under the participant's
33 individual budget.

34 (o) If at any time during participation in the SDS Program a
35 regional center determines that an individual is no longer eligible
36 to continue based on the criteria described in subdivision (i), or a
37 participant voluntarily chooses to exit the SDS Program, the
38 regional center shall provide for the participant's transition from
39 the SDS Program to other services and supports. This shall include
40 the development of a new individual program plan that reflects

1 the services and supports necessary to meet the individual's needs.
2 The regional center shall ensure that there is no gap in services
3 and supports during the transition period.

4 (1) Upon determination of ineligibility pursuant to this
5 subdivision, the regional center shall inform the participant in
6 writing of his or her ineligibility, the reason for the determination
7 of ineligibility and shall provide a written notice of the fair hearing
8 rights, as required by Section 4701.

9 (2) An individual determined ineligible, or who voluntarily exits
10 the SDS Program, shall be permitted to return to the SDS Program
11 upon meeting all applicable eligibility criteria and after a minimum
12 of 12 months time has elapsed.

13 (p) A participant in the SDS Program shall have all the rights
14 established in Chapter 7 (commencing with Section 4700), except
15 as provided under paragraph (6) of subdivision (e).

16 (q) Only a financial management services provider is required
17 to apply for vendorization in accordance with Subchapter 2
18 (commencing with Section 54300) of Chapter 3 of Title 17 of the
19 California Code of Regulations, for the SDS Program. All other
20 service providers shall have applicable state licenses, certifications,
21 or other state required documentation, but are exempt from the
22 vendorization requirements set forth in Title 17 of the California
23 Code of Regulations. The financial management services entity
24 shall ensure and document that all service providers meet specified
25 requirements for any service that may be delivered to the
26 participant.

27 (r) A participant in the SDS Program may request, at no charge
28 to the participant or the regional center, criminal history
29 background checks for persons seeking employment as a service
30 provider and providing direct care services to the participant.

31 (1) Criminal history records checks pursuant to this subdivision
32 shall be performed and administered as described in subdivision
33 (b) and subdivisions (d) to (h), inclusive, of Section 4689.2, and
34 Sections 4689.4 to 4689.6, inclusive, and shall apply to
35 vendorization of providers and hiring of employees to provide
36 services for family home agencies and family homes.

37 (2) The department may enter into a written agreement with the
38 Department of Justice to implement this subdivision.

39 (s) A participant enrolled in the SDS Program pursuant to this
40 section and utilizing an individual budget for services and supports

1 is exempt from Section 4783 and from the Family Cost
2 Participation Program.

3 (t) Notwithstanding any provision of law, an individual receiving
4 services and supports under the self-determination projects
5 established pursuant to Section 4685.5 may elect to continue to
6 receive self-determination services within his or her current scope
7 and existing procedures and parameters. Participation in a
8 self-determination project pursuant to Section 4685.5 may only
9 be terminated upon a participant's voluntary election and
10 qualification to receive services under another delivery system.

11 (u) Each regional center shall be responsible for implementing
12 an SDS Program as a term of its contract under Section 4629.

13 (v) Commencing January 10, 2008, the department shall
14 annually provide the following information to the policy and fiscal
15 committees of the Legislature:

16 (1) Number and characteristics of participants, by regional
17 center.

18 (2) Types and ranking of services and supports purchased under
19 the SDS Program, by regional center.

20 (3) Range and average of individual budgets, by regional center.

21 (4) Utilization of the risk pool, including range and average
22 individual budget augmentations and type of service, by regional
23 centers.

24 (5) Information regarding consumer satisfaction under the SDS
25 Program and, when data is available, the traditional service delivery
26 system, by regional center.

27 (6) The proportion of participants who report that their choices
28 and decisions are respected and supported.

29 (7) The proportion of participants who report they are able to
30 recruit and hire qualified service providers.

31 (8) The number and outcome of individual budget appeals, by
32 regional center.

33 (9) The number and outcome of fair hearing appeals, by regional
34 center.

35 (10) The number of participants who voluntarily withdraw from
36 participation in the SDS Program and a summary of the reasons
37 why, by regional center.

38 (11) The number of participants who are subsequently
39 determined to no longer be eligible for the SDS Program and a
40 summary of the reasons why, by regional center.

~~(12) Identification of barriers to participation and recommendations for program improvements.~~

~~(13) A comparison of average annual expenditures for individuals with similar characteristics not participating in the SDS Program.~~

SEC. 4. Article 4.5 (commencing with Section 4689.90) is added to Chapter 6 of Division 4.5 of the Welfare and Institutions Code, to read:

Article 4.5. Self-Determination Program

4689.90. For the purposes of this section, the following definitions shall apply:

(a) "Advocacy services" means services and supports that facilitate the participant in exercising his or her legal, civil, and service rights to gain access to generic services and benefits that the participant is entitled to receive. Advocacy services shall be provided only when other sources of similar assistance are not available to the participant, and when advocacy is directed towards obtaining generic services.

(b) "Financial management service" means a conflict of interest free service or function that assists the participant to manage and direct the distribution of funds contained in the individual allocation. This may include, but is not limited to, bill paying services and activities that facilitate the employment of service workers by the participant, including, but not limited to, federal, state, and local tax withholding payments, unemployment compensation fees, establishing benefits, fiscal accounting, and expenditure reports. The financial management service shall provide to the department workforce and expenditure information as required in this article. The department shall establish specific qualifications which shall be required of a financial management services provider and contract with one entity to provide financial management services statewide.

(c) "Individual allocation" means the amount of funding available to the participant for the purchase of services and supports necessary to implement an individual program plan (IPP). The individual allocation shall be constructed using a fair, equitable, and transparent methodology that includes, but is not limited to, consumer characteristics and needs.

1 (d) “Individual budget” means an individually created and
2 designed expenditure plan, developed by the participant, for
3 purchases to be made within the individual allocation to achieve
4 the core quality outcomes relevant to the participant and meet the
5 participant’s IPP goals.

6 (e) “Participant” means an individual, and when appropriate,
7 his or her parents, legal guardian or conservator, or authorized
8 representative, who has been deemed eligible for, and have
9 voluntarily agreed to participate in, the Self-Determination
10 Program.

11 (f) “Public Employment Relations Board” or “board” means
12 the board established pursuant to Article 2 (commencing with
13 Section 3541) of Chapter 10.7 of Division 4 of Title 1 of the
14 Government Code.

15 (g) “Risk pool” means an account that is available for use in
16 addressing the unanticipated needs of participants in the
17 Self-Determination Program.

18 (h) “Self-Determination Program” or “SD Program” means
19 a voluntary delivery system consisting of a defined and
20 comprehensive mix of services and supports, selected and directed
21 by a participant, in order to meet all or some of the objectives in
22 his or her IPP. Self-determination services and supports are
23 designed to assist the participant to achieve personally defined
24 outcomes in inclusive community settings. Self-determination
25 services and supports shall include, but are not limited to, all of
26 the following:

- 27 (1) Home health aide services.
- 28 (2) Employment and self-employment supports including
29 individual placement supported employment.
- 30 (3) Respite services.
- 31 (4) Supports broker functions and services.
- 32 (5) Financial management services and functions.
- 33 (6) Environmental accessibility adaptations.
- 34 (7) Skilled nursing.
- 35 (8) Transportation.
- 36 (9) Specialized medical equipment and supplies.
- 37 (10) Personal emergency response system.
- 38 (11) Integrative therapies.
- 39 (12) Vehicle adaptations.

- 1 (13) Communication support including interpretive or
2 translation services.
- 3 (14) Crises intervention.
- 4 (15) Nutritional consultation.
- 5 (16) Behavior intervention services.
- 6 (17) Specialized therapeutic services.
- 7 (18) Family assistance and support.
- 8 (19) Housing access supports.
- 9 (20) Community living supports, including, but not limited to,
10 socialization, personal skill development, community participation,
11 recreation, and leisure.
- 12 (21) In-home and personal care supports.
- 13 (22) Advocacy services.
- 14 (23) Individual training and education, including, but not limited
15 to, adult education and support to attend community college.
- 16 (24) Participant-designated goods and services.
- 17 (25) Training and education transition services.
- 18 (i) “Self-Determination support worker” or “SD support
19 worker” means a person who has been selected and employed by
20 a participant for an average of at least 25 hours per month over
21 a two-month period to provide the relevant SD services and
22 supports described in subdivision (h), but does not include licensed
23 professionals and workers providing services purchased from
24 agencies or other organizations where the worker is solely under
25 the employ of those organizations.
- 26 (j) “Supports broker” means a person, selected and directed
27 by the participant, who fulfills the supports brokerage service or
28 function and assists the participant in the SD Program.
- 29 (k) “Supports brokerage” means a conflict of interest free
30 service or function that assists participants in making informed
31 decisions about how to develop their budget from the individual
32 allocation, assists in locating, accessing, and coordinating services
33 consistent with and reflecting a participant’s needs and preferences
34 and negotiating with providers. A supports brokerage service is
35 available to assist in identifying immediate and long-term needs,
36 developing options to meet those needs, participating in the
37 person-centered planning process and development of the IPP,
38 and obtaining identified services and supports.
- 39 4689.91. (a) (1) The Self-Determination Program is hereby
40 established and shall be available in every regional center

1 *catchment area to enable individuals with developmental*
2 *disabilities to exercise their rights to make choices in their own*
3 *lives and access services and supports as described in subdivision*
4 *(j) of Section 4502. The program shall give participants greater*
5 *control over access to, and the flexibility to access, a wide range*
6 *of needed and desired services and supports, including, but not*
7 *limited to, hiring their own workers and purchasing needed items.*
8 *The SD Program shall be consistent with the requirements set*
9 *forth in this section.*

10 *(2) SD Program participants shall be provided with a capitated*
11 *individual funding allocation computed in a fair, transparent, and*
12 *equitable manner, based on consumer characteristics and needs.*
13 *The allocation shall be used for the purchase of services and*
14 *supports necessary to implement the participant's individual*
15 *program plan (IPP).*

16 *(b) The SD Program shall be designed to promote, and shall*
17 *be evaluated against, core quality outcomes for the participants,*
18 *including, but not limited to, all of the following:*

19 *(1) Participants' welfare, health, and safety.*

20 *(2) Participants living in a place called home, including living*
21 *with family, friends, or on one's own; adult participants' living*
22 *arrangements are under their own control.*

23 *(3) Participants having meaningful participation and*
24 *membership in their own community.*

25 *(4) Participants maintaining reciprocal long-term relationships,*
26 *including relationships that assist the participant to live a healthy,*
27 *included life.*

28 *(5) Participants of working age generating private income,*
29 *through typical jobs in regular employment settings or through*
30 *self-employment.*

31 *(6) Participants having access to or control over transportation.*

32 *(c) Participation in the SD Program is fully voluntary. A*
33 *participant may choose to participate in, and may choose to leave,*
34 *the SD Program at any time. A regional center may not require*
35 *participation in the SD Program as a condition of eligibility for,*
36 *or the delivery of, services and supports otherwise available under*
37 *this division. Participation in the SD Program shall be available*
38 *to any regional center consumer who meets the following eligibility*
39 *requirements:*

40 *(1) The participant is three years of age or older.*

1 (2) *The participant, and when appropriate his or her parents,*
2 *legal guardian or conservator, or authorized representative, agrees*
3 *to all of the following terms and conditions:*

4 (A) *The participant shall agree to utilize the services and*
5 *supports available within the SD Program only when generic*
6 *services cannot be accessed, and except for Medi-Cal state plan*
7 *benefits when applicable.*

8 (B) *The participant shall consent to use only services necessary*
9 *to implement his or her IPP, as an available service in the SD*
10 *Program, and shall agree to comply with any and all other terms*
11 *and conditions for participation in the SD Program described in*
12 *this section.*

13 (C) *The participant shall manage SD Program services within*
14 *the individual allocation amount.*

15 (D) *The participant shall utilize the services of the conflict of*
16 *interest free financial management services entity.*

17 (E) *The participant shall utilize the services of supports broker*
18 *of his or her own choosing for the purpose of providing services*
19 *and functions as described in subdivisions (j) and (k) of Section*
20 *4689.90. A supports broker may either be hired or designated by*
21 *the participant. A designated supports broker shall perform support*
22 *brokerage services on a nonpaid basis. An individual or a parent*
23 *of an individual in the SD Program shall provide supports*
24 *brokerage services only as an unpaid designated provider.*

25 (3) *A participant who is not Medi-Cal eligible may participate*
26 *in the SD Program and receive SD Program services if all other*
27 *program eligibility requirements are met.*

28 (d) *An adult may designate an authorized representative to*
29 *participate in the program on his or her behalf. The representative*
30 *shall meet all of the following requirements:*

31 (1) *He or she shall demonstrate knowledge and understanding*
32 *of the participant's needs and preferences.*

33 (2) *He or she shall be willing and able to comply with SD*
34 *Program requirements.*

35 (3) *He or she shall be at least 18 years of age.*

36 (4) *He or she shall be approved by the participant to act in the*
37 *capacity of a representative.*

38 (e) *Notwithstanding any provision of law, an individual*
39 *receiving services and supports under the self-determination pilot*
40 *projects originally established pursuant to Section 13 of Chapter*

1 80 of the Statutes of 1998, as amended, may elect to continue to
2 receive self-determination services within his or her current scope
3 and existing procedures and parameters. Participation in
4 self-determination projects originally authorized pursuant to
5 Section 13 of Chapter 80 of the Statutes of 1998, as amended, may
6 only be terminated upon a participant's voluntary election and
7 qualification to receive services under another delivery system.

8 (f) The SD Program shall be phased in during the first year in
9 the five regional centers with self-determination pilot projects that
10 were originally authorized by Section 13 of Chapter 80 of the
11 Statutes of 1998, as amended. In the second year, each regional
12 center shall be responsible for implementing an SD Program as
13 a term of its contract under Section 4629.

14 4689.92. (a) The department shall develop informational
15 materials about the SD Program. The department shall ensure
16 that regional centers are trained in the principles of the SD
17 Program, the mechanics of the SD Program, and the rights of
18 consumers and families as candidates for, and participants in, the
19 SD Program. Regional centers shall conduct local meetings or
20 forums to provide regional center consumers and families with
21 information about the SD Program. Regional centers shall make
22 available to consumers and families who express an interest in
23 participating in the SD program a timely in-depth orientation;
24 however, enrollment in the SD program shall not be delayed or
25 conditioned on the orientation.

26 (b) Prior to enrollment in the SD Program, and based on the
27 methodology described in this subdivision, an individual, and when
28 appropriate, his or her parents, legal guardian or conservator, or
29 authorized representative, shall be provided in writing with the
30 individual allocation amount that would be provided for developing
31 his or her individual budget to implement his or her IPP. The
32 individual, and when appropriate his parents, legal guardian or
33 conservator, or authorized representative, may then elect to
34 participate in the SD Program.

35 (1) The methodology and formulae for determining the
36 individual allocation amount shall be computed in a fair,
37 transparent, and equitable manner, that includes, but is not be
38 limited to, consumer characteristics and needs. The department
39 shall meet with the Self-Determination Program Advisory

1 Committee, established pursuant to Section 4689.94, to receive
2 their input on developing the methodology.

3 (2) The individual allocation amount shall equal 90 percent of
4 the annual per capita purchase of service costs for the previous
5 fiscal year for consumers with similar characteristics, who do not
6 receive services through the SD Program. The allocation
7 methodology shall be constructed using data available on the State
8 Department of Developmental Services' information system,
9 including, but not limited to, age, type of residence, type of
10 disability and ability, functional skills, support needs, and whether
11 the individual is in transition. Until the first full year of historical
12 data is available, the department shall adjust the allocation to
13 estimate the impact of service reductions resulting from the Budget
14 Act of 2011.

15 (3) The allocation methodology shall provide for additional
16 necessary resources when a participant is transitioning from a
17 family home or a congregate setting to living independently.

18 (4) Once an individual, and when appropriate his or her parents,
19 legal guardian or conservator, or authorized representative, has
20 elected to become an SD Program participant, his or her individual
21 allocation amount shall be available to the participant each year
22 for the purchase of SD Program services until a new individual
23 allocation amount has been determined. An individual allocation
24 amount shall be calculated no more than once in a 12-month
25 period.

26 (5) A regional center's calculation of an individual allocation
27 amount may be appealed to the executive director of the regional
28 center, or his or her designee, within 30 days after receipt of the
29 allocation amount. The executive director of the regional center
30 shall issue a written decision within 10 working days. The decision
31 of the executive director may be appealed to the Director of
32 Developmental Services, or his or her designee, within 15 days of
33 receipt of the written decision. The decision of the department is
34 final.

35 (c) Once an individual, and when appropriate his parents, legal
36 guardian or conservator, or authorized representative, has elected
37 to become an SD Program participant and his or her individual
38 allocation amount has been determined, the following shall occur:

1 (1) A regional center shall advance funds to the financial
2 management services entity to support a participant's hiring of a
3 supports broker.

4 (2) The participant, and when appropriate his parents, legal
5 guardian or conservator, or authorized representative, with the
6 assistance of the service broker and other members of his or her
7 circle of support if appropriate, shall develop a person-centered
8 plan and individual budget within the amount of the individual
9 allocation. The plan and budget shall be designed to assist the
10 participant to achieve the relevant core quality outcomes specified
11 in subdivision (b) of Section 4689.91.

12 (3) The individual budget shall distribute the allocation,
13 including expenditures for services and supports, among the
14 following categories based on the core quality outcomes specified
15 in subdivision (b) of Section 4689.91:

16 (A) Welfare, health, and safety.

17 (B) Supports for living in a place called home.

18 (C) Meaningful participation and membership in the community
19 including, but not limited to, socialization, recreational, and
20 educational opportunities.

21 (D) Developing and maintaining long-term relationships.

22 (E) Generating income, supports for employment or
23 self-employment.

24 (F) Transportation.

25 (4) A participant may not use any portion of his or her individual
26 allocation to purchase services from a licensed long-term health
27 care facility, as defined in paragraph (44) of subdivision (a) of
28 Section 54302 of Title 17 of the California Code of Regulations,
29 or a residential facility, as defined in paragraph (55) of subdivision
30 (a) of Section 54302 of Title 17 of the California Code of
31 Regulations. A participant may not use his or her individual
32 allocation to purchase complete day program or habilitation
33 services, as defined in paragraph (16) or (34) of subdivision (a)
34 of Section 54302 of Title 17 of the California Code of Regulations,
35 respectively. However, a participant may use a portion of his or
36 her individual allocation to negotiate for specific periodic or
37 one-time services from a day program or habilitation services
38 provider. A participant may also use a portion of his or her
39 allocation to purchase job development and job coaching services
40 for individual placement supported employment.

1 (5) Consumers currently living in a licensed long-term health
2 care facility, as defined in paragraph (44) of subdivision (a) of
3 Section 54302 of Title 17 of the California Code of Regulations,
4 or a residential facility, as defined in paragraph (55) of subdivision
5 (a) of Section 54302 of Title 17 of the California Code of
6 Regulations, or receiving day program or habilitation services,
7 as defined in paragraph (16) or (34) of subdivision (a) of Section
8 54302 of Title 17 of the California Code of Regulations,
9 respectively, may request that the regional center provide
10 person-centered planning services in order to make arrangements
11 for transition to the SD Program. In that case, the regional center
12 shall initiate person-centered planning services within 30 days of
13 a request pursuant to paragraphs (1) and (2).

14 (6) The planning team, established pursuant to subdivision (j)
15 of Section 4512, shall review and utilize the person-centered plan
16 developed in paragraph (2) to develop the IPP for the participant.
17 The IPP shall detail the goals and objectives of the participant
18 that are to be met through the purchase of participant selected
19 services and supports. The planning team shall also review the
20 individual budget to ensure the budget assists the participant to
21 achieve the core quality outcomes, assures his or her health and
22 safety, and implements his or her IPP goals. The completed budget
23 shall be attached to the IPP.

24 (7) The participant shall implement his or her IPP, including
25 choosing the services and supports allowable under this section
26 necessary to implement the plan. A regional center may not
27 prohibit the purchase of any service or support that is otherwise
28 allowable under this section.

29 (8) Annually, participants may transfer up to 20 percent of the
30 funds originally distributed to any budget category set forth in
31 paragraph (3), to another budget category or categories. Transfers
32 in excess of 20 percent of the original amount allocated to any
33 budget category may be made upon the approval of the regional
34 center. Regional centers may only deny a transfer if necessary to
35 protect the health and safety of the participant.

36 (9) Consistent with the implementation date of the IPP, the
37 regional center shall annually ascertain from the participant
38 whether there are any circumstances that require a change to the
39 annual individual allocation amount as calculated pursuant to
40 subdivision (b). Based on that review, the regional center shall

1 calculate a new budget amount based on the methodology
2 described in subdivision (b). The participant may choose the new
3 budget amount, or continue using the current amount. The IPP
4 shall be amended to reflect any changes in the allocation.

5 (d) The department shall establish a risk pool fund to meet the
6 unanticipated needs of participants in the SD Program. The fund
7 are hereby administered by the department. Notwithstanding
8 Section 13340 of the Government Code, all moneys in the fund are
9 hereby continuously appropriated to the department, without
10 regard to fiscal year, for the purpose of funding services and
11 supports pursuant to this subdivision.

12 (1) The risk pool shall be funded at the equivalent of 2.5 percent
13 of the historical annual purchase of service costs for consumers
14 participating in the SD Program, as determined for consumers of
15 similar characteristics pursuant to paragraph (2) of subdivision
16 (b).

17 (2) The risk pool shall be allocated by the department to
18 regional centers through a process specified by the department.

19 (3) The risk pool may be used only in the event of substantial
20 change in a participant's service and support needs that were not
21 known at the time the individual allocation was set including, but
22 not limited to, an urgent need to relocate a residence or to prevent
23 or respond to significant injury or illness.

24 (4) The risk pool may be accessed by a participant more than
25 once in a lifetime.

26 (e) The department shall allocate 2.5 percent of the historical
27 annual purchase of service costs for consumers participating in
28 the SD Program, as determined for consumers of similar
29 characteristics pursuant to paragraph (2) of subdivision (b),
30 towards offsetting costs to the state of the SD Program, including,
31 but not limited to, training, caseload ratio improvement, and
32 service broker support for participants' initial person centered
33 planning and budget plan development.

34 (f) The regional center service coordinator shall assist
35 consumers and when appropriate his or her parents, legal guardian
36 or conservator, or authorized representative, in understanding the
37 SD Program service option, assist participants to understand their
38 rights, responsibilities and opportunities under the SD Program,
39 and provide information on locating service brokers. The regional
40 center service coordinator shall, as required by this section,

1 determine the SD Program participant's individual allocation
2 amount, participate in the IPP, approve the initial individual
3 budget and amendments to the budget, ensure plans and services
4 are adequate to ensure the participants health, welfare, and safety,
5 address the goals of the IPP and the core quality outcomes
6 specified in subdivision (b) of Section 4689.91, monitor for abuse,
7 fraud, and exploitation, monitor the quarterly budget report for
8 rate of expenditure and consistency with the budget plan, annually
9 ascertain from the participant whether there are any circumstances
10 that require a change to the annual individual allocation amount,
11 conduct quarterly visits as required by the department, and assist
12 the participant to access the risk pool in the event of a substantial
13 change in a participant's service and support needs that were not
14 known at the time the individual allocation was set. Regional
15 centers, therefore, shall provide an average service
16 coordinator-to-consumer ratio of 1 to 62 for all SD Program
17 participants. To the maximum extent possible, regional centers
18 shall assign SD Program participants to service coordinators with
19 a designated SD Program caseload.

20 (g) The department shall annually provide for savings to the
21 General Fund equivalent to 5 percent of the annual purchase of
22 services costs for SD Program participants, as determined for
23 consumers of similar characteristics pursuant to paragraph (2)
24 of subdivision (b).

25 (h) The financial management service shall send to the
26 participant and the regional center case manager a quarterly
27 statement that describes the amount of allocation by budget
28 category, the amount spent in the previous 90-day period, and the
29 amount of funding that remains available under the participant's
30 individual budget.

31 (i) If at any time during participation in the SD Program a
32 regional center determines that an individual is no longer eligible
33 to continue based on the eligibility criteria described in subdivision
34 (c) of Section 4689.91, or a participant voluntarily chooses to exit
35 the SD Program, the regional center shall provide for the
36 participant's transition from the SD Program to other services
37 and supports. This shall include the development of a new
38 individual program plan that reflects the services and supports
39 necessary to meet the individual's needs. The regional center shall

1 *ensure that there is no gap in services and supports during the*
2 *transition period.*

3 *(1) Upon determination of ineligibility pursuant to this*
4 *subdivision, the regional center shall inform the participant in*
5 *writing of his or her ineligibility, the reason for the determination*
6 *of ineligibility and shall provide a written notice of the fair hearing*
7 *rights, as required by Section 4701.*

8 *(2) An individual determined to be ineligible, or who voluntarily*
9 *exits the SD Program, shall be permitted to return to the SD*
10 *Program upon meeting all applicable eligibility criteria and after*
11 *a minimum of 12 months time has elapsed.*

12 *(j) A participant in the SD Program shall have all the rights*
13 *established in Chapter 7 (commencing with Section 4700), except*
14 *as provided under paragraph (5) of subdivision (b).*

15 *(k) Only the financial management service provider is required*
16 *to apply for vendorization in accordance with subchapter 2*
17 *(commencing with Section 54300) of Chapter 3 of Title 17 of the*
18 *California Code of Regulations, for the SD Program. All other*
19 *service providers shall have applicable state licenses,*
20 *certifications, or other state required documentation, but are*
21 *exempt from the vendorization requirements set forth in Title 17*
22 *of the California Code of Regulations. The financial management*
23 *services entity shall ensure and document that all service providers*
24 *meet specified requirements for any service that may be delivered*
25 *to the participant.*

26 *(l) A participant enrolled in the SD Program pursuant to this*
27 *section and utilizing an individual allocation for services and*
28 *supports is exempt from Section 4783, the Family Cost*
29 *Participation Program, and cost control restrictions, including,*
30 *but not limited to purchases of services pursuant to Sections*
31 *4648.35, 4648.5, and 4659, subparagraph (B) of paragraph (3)*
32 *of subdivision (c) of Section 4685, Sections 4686.2, 4686.5, and*
33 *4689, and purchase of service best practices enacted pursuant to*
34 *4620.3.*

35 *4689.93. (a) The Legislature finds and declares that SD*
36 *Program support workers are the foundation necessary for SD*
37 *Program participants to access full community participation and*
38 *employment opportunities and to pursue a life of meaning in the*
39 *ways that they choose.*

1 (b) Participants shall have the right to utilize their individual
2 allocation to employ SD support workers of their choice, hire,
3 supervise, direct, schedule, evaluate, train, and terminate
4 employment of SD support workers. Except for the limited purposes
5 set forth herein, the state shall not be deemed the employer of SD
6 support workers for any purpose.

7 (c) The state shall support the quality, availability, and stability
8 of direct support workers by establishing a base compensation
9 package to ensure decent pay standards for workers in the
10 program. Individuals may use their allocation and private sources
11 of funds to pay SD support workers above the base established by
12 the state, develop job descriptions, and otherwise organize and
13 incentivize their SD support workers.

14 (d) SD support workers may form, join, and participate in the
15 activities of labor organizations of their own choosing in order to
16 engage in collective negotiations with the department with regard
17 to all matters specified in paragraph (4).

18 (1) Within 10 days of receipt of a request from a labor
19 organization that represents SD support workers, the department
20 shall provide the following information concerning SD support
21 workers:

22 (A) Name, address, telephone number, and any unique personal
23 identification generated by the department.

24 (B) Wage rates earned by each SD support worker.

25 (C) Hours of services provided by each SD support worker. The
26 department shall be required to collect the information on no less
27 than a quarterly basis from any financial management services
28 providers that process payments for SD support workers.

29 (2) A labor organization that represents SD support workers
30 may petition the Board to be designated as the exclusive
31 negotiating representative of SD support workers in the state.

32 (A) The only appropriate bargaining unit of SD support workers
33 shall consist of all SD support workers in the state.

34 (B) If a labor organization that represents SD support workers
35 petitions the Board to be designated as the negotiating
36 representative for SD support workers and provides written
37 authorization from a majority of the total number of workers in
38 the unit as of January of the year in which the petition is made,
39 the Board shall designate that organization as the exclusive
40 negotiating representative for all SD support workers in the unit.

1 (C) If a labor organization that represents SD support workers
2 petitions to be designated as the negotiating representative for all
3 SD support workers in the unit and provides written authorization
4 to serve as the negotiating representative from at least 30 percent
5 of the workers in the unit, an election shall be held pursuant to
6 Board policies and procedures within 90 days after the day on
7 which the petition is filed. The Board shall designate the labor
8 organization that prevails in the election the exclusive negotiating
9 representative for all SD support workers in the unit.

10 (3) The designated exclusive negotiating representative pursuant
11 to paragraph (2) shall be the negotiating representative for all SD
12 support workers in the unit for the purposes of this subdivision.

13 (A) An SD support worker may refuse to join or participate in
14 the activities of the designated negotiating representative.

15 (B) The designated negotiating representative shall represent
16 all SD support workers in the bargaining unit fairly and without
17 discrimination and without regard to whether the workers are
18 members of the labor organization designated as the negotiating
19 representative.

20 (C) The designated negotiating representative may charge a
21 reasonable fair share service fee to bargaining unit nonmembers,
22 who meet the minimum hour criteria described in subdivision (i)
23 of Section 4689.9, for representing them in negotiations, contract
24 administration, and other activities. The costs covered by the fair
25 share service fee pursuant to this section may include, but are not
26 limited to, costs associated with representing SD support workers
27 pursuant to paragraph (4). The fair share service fee shall not
28 exceed the annual dues paid by members of the labor organization
29 designated as the negotiating representative of SD support workers.

30 (4) The designated negotiating representative of SD support
31 workers shall negotiate with the department concerning the terms
32 and conditions of workers' participation in the SD Program
33 including all of the following:

34 (A) The base compensation package mandated by this article.

35 (B) Access to benefits for SD support workers.

36 (C) Payment procedures.

37 (D) Training and career development opportunities.

38 (E) Deduction of membership dues and fair share service fees.

39 (5) The designated negotiating representative of SD support
40 workers shall not negotiate over terms and conditions of

1 *employment reserved for the participant pursuant to subdivisions*
2 *(b) and (c).*

3 *(6) The designated negotiating representative of SD support*
4 *workers shall not call or direct a strike or any other form of work*
5 *stoppage.*

6 *(7) The Board's jurisdiction shall include all matters related*
7 *to the representation of SD support workers.*

8 *(e) A participant in the SD Program may request, at no charge*
9 *to the participant or the regional center, criminal history*
10 *background checks for persons seeking employment as a service*
11 *provider and providing direct care services to the participant.*

12 *(1) Criminal history records checks pursuant to this subdivision*
13 *shall be performed and administered as described in subdivision*
14 *(b) and subdivisions (d) to (h), inclusive, of Section 4689.2, and*
15 *Sections 4689.4 to 4689.6, inclusive, and shall apply to*
16 *vendorization of providers and hiring of employees to provide*
17 *services for family home agencies and family homes.*

18 *(2) The department may enter into a written agreement with the*
19 *Department of Justice to implement this subdivision.*

20 *4689.94. (a) The department shall establish a statewide*
21 *Self-Determination Program Advisory Committee. Greater than*
22 *50 percent of the committee shall be comprised of SD Program*
23 *participants and their family members representing the geographic,*
24 *ethnic, and language diversity of the state. Other committee*
25 *members shall include representatives from the State Council on*
26 *Developmental Disabilities, Disability Rights California, a*
27 *University Center for Excellence in Developmental Disabilities,*
28 *regional centers, and a labor representative of regional center*
29 *employees. The committee shall meet at least semiannually and*
30 *participate in system oversight and advise with respect to ongoing*
31 *system design and implementation and SD support worker wages,*
32 *benefits, training, and career development. In addition, the*
33 *committee shall meet with the department at least twice during the*
34 *initial development phase of the SD Program to provide input on*
35 *the methodology for calculating individual allocations and other*
36 *initial implementation issues.*

37 *(b) Notwithstanding Section 10231.5 of the Government Code,*
38 *commencing January 10, 2013, the department shall annually*
39 *provide the following information to the SD Program Advisory*

1 *Committee and to the policy and fiscal committees of the*
2 *Legislature:*

3 *(1) The number and characteristics of participants, by regional*
4 *center.*

5 *(2) The range and average of individual allocations, by regional*
6 *center.*

7 *(3) Utilization of the risk pool, including range and average*
8 *individual allocation augmentations and type of service, by*
9 *regional center.*

10 *(4) The proportion of participants who report that their choices*
11 *and decisions are respected and supported.*

12 *(5) Detailed workforce metrics for SD support workers including*
13 *wages, hours worked, and length of time on the job.*

14 *(6) The number and outcome of individual allocation appeals,*
15 *by regional center.*

16 *(7) The number and outcome of fair hearing appeals, by regional*
17 *center.*

18 *(8) The number of participants who voluntarily withdraw from*
19 *participation in the SD Program and a summary of the reasons*
20 *why, by regional center.*

21 *(9) The number of participants who are subsequently determined*
22 *to no longer be eligible for the SD Program and a summary of the*
23 *reasons why, by regional center.*

24 *(10) Identification of barriers to participation and*
25 *recommendations for program improvements.*

26 *(11) A comparison of average annual expenditures for*
27 *individuals with similar characteristics not participating in the*
28 *SD Program.*

29 *(c) Notwithstanding Section 10231.5 of the Government Code,*
30 *commencing June 30, 2015, and at three year intervals, the*
31 *department shall submit an SD program evaluation to the relevant*
32 *policy committees of the Legislature and the SD Program Advisory*
33 *Committee. The evaluation shall be developed in consultation with*
34 *the advisory committee and shall be based on the core quality*
35 *outcomes described in subdivision (b) of Section 4689.91 and also*
36 *include a summary of all of the following:*

37 *(1) The types and ranking of services and supports purchased*
38 *under the SD Program, by regional center.*

(2) *Consumer satisfaction under the SD Program and, when data is available, the traditional service delivery system, by regional center.*

(3) *The proportion of participants who report they are able to recruit, hire, and retain qualified service providers.*

4689.95. *It is the intent of the Legislature that the purchase of services and supports through the SD Program be eligible for federal Medicaid match funding. The department shall take all steps necessary to ensure federal financial participation is available for all SD Program services and supports by applying for amendments to the current home and community-based waiver for individuals with developmental disabilities or for a new waiver pursuant to Section 1396n of Title 42 of the United States Code. The department shall seek to maximize federal financial participation by applying for an enhanced federal match through the federal Community First Choice Option pursuant to Section 1396n(k) of Title 42 of the United States Code.*

~~SECTION 1. Section 4685.8 is added to the Welfare and Institutions Code, to read:~~

~~4685.8. (a) (1) The Self-Determination Program (SD Program) is hereby established and shall be available in every regional center catchment area to enable individuals with developmental disabilities to exercise their rights to make choices in their own lives, as described in subdivision (j) of Section 4502. The program shall give participants greater control over access to, and the flexibility to access, a wide range of needed and desired services and supports, including, but not limited to, hiring their own workers and purchasing needed items. The SD Program shall be consistent with the requirements set forth in this section.~~

~~(2) SD Program participants shall be provided with a capitated individual funding allocation computed in a fair, transparent, and equitable manner, based on consumer characteristics and needs. The allocation shall be used for the purchase of services and supports necessary to implement the participant's individual program plan.~~

~~(b) The Self-Determination Program shall be designed to promote, and shall be evaluated against, core quality outcomes for the participants, including, but not limited to, all of the following:~~

~~(1) Participants' welfare, health, and safety.~~

1 ~~(2) Whether participants are living in a place called home, under~~
2 ~~one's own control, including living with family, friends, or on~~
3 ~~one's own.~~

4 ~~(3) Whether participants have meaningful participation and~~
5 ~~membership in their own community.~~

6 ~~(4) Whether participants are maintaining reciprocal long-term~~
7 ~~relationships, including relationships that assist the participant to~~
8 ~~live a healthy, included life.~~

9 ~~(5) Whether participants are generating private income, through~~
10 ~~typical jobs in regular employment settings or through~~
11 ~~self-employment.~~

12 ~~(6) Whether participants have control over transportation.~~

13 ~~(e) It is the intent of the Legislature that the purchase of services~~
14 ~~and supports through the SD Program be eligible for federal~~
15 ~~Medicaid match funding. The department shall take all steps~~
16 ~~necessary to ensure federal financial participation is available for~~
17 ~~all SD Program services and supports by applying for amendments~~
18 ~~to the current home and community-based waiver for individuals~~
19 ~~with developmental disabilities or for a new waiver pursuant to~~
20 ~~Section 1396n of Title 42 of the United States Code. The~~
21 ~~department shall seek to maximize federal financial participation~~
22 ~~by applying for an enhanced federal match through the federal~~
23 ~~Community First Choice Option pursuant to Section 1396n(k) of~~
24 ~~Title 42 of the United States Code.~~

25 ~~(d) Individuals shall have the right to utilize their allocation to~~
26 ~~hire workers of their choice, and supervise, direct, schedule,~~
27 ~~evaluate, train, and terminate employees. The state shall support~~
28 ~~the quality, availability, and stability of direct support workers by~~
29 ~~establishing a base compensation package to ensure decent pay~~
30 ~~standards for workers in this program. Individuals may use their~~
31 ~~allocation and private sources of funds to pay direct support~~
32 ~~workers above the base established by the state, develop job~~
33 ~~descriptions, and otherwise organize and incentivize their support~~
34 ~~workers.~~